COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Writ Petition No 313 of 2002 (S/S) decided on: 15th July, 2005
(Old Number 3347 of 1995)

Writ Petition No. 131 of 2002 (S/S)

Pramod Kumar Upadhyaya
S/o Late Sri Jyoti Prasad Upadhyaya
Presently Posted as Forest Range Officer
Forest Range Officer, Social Forestry Division
Firozabad. ……..Petitioner

Versus

1. State of U.P.
   through the Principal Secretary
   Forest Department, Civil Secretariat
   Lucknow.
2. Principal Chief Conservator of Forest
   (Administration & Planning) U.P.
   17, Rana Pratap Marg, Lucknow.
3. Chief Conservator of Forest
   (Administration & Planning)
   U.P. 17, Rana Pratap Marg,
   Lucknow. …….Respondents

Shri Kamal Jeet Narayan, learned Counsel for the petitioner.
Shri Bhupender Singh, Learned Standing Counsel for respondents.

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date:15.07.2005

(Hon. Mr. Justice Prafulla C. Pant)

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 313 of 2002 (S/S)_
(Old Number 3347 of 1995)

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Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has sought writ in the nature of mandamus, commanding the respondents, not to make recovery in pursuance of impugned order dated 07.08.1995 (copy Annexure-1 to the writ petition), issued in furtherance to the order of punishment dated 30.06.1994 (copy Annexure-4 to the writ petition).

2. Brief facts of the case, as narrated in the writ petition are that petitioner was appointed as Forest Range Officer in the year 1982. Since then the track record of the

petitioner in the service had been unblemished. In the year 1990, the petitioner was posted as Forest Range Officer in Gaula Range, Tarai (East) Forest Division, Haldwani. During his posting in said range, on 13.06.1990, it is alleged that Khalasi of the office in connivance with certain outsiders manipulated to take away the keys, kept in the residence of the petitioner and stole cash of Rs. 1,99,962.80 paise from the Cash Chest kept in the office. The cash stolen was infact the money recovered on account of duties levied by Forest Department and was to be deposited in District Treasury. A First Information Report of the incident was lodged with the concerned Police Station. It is stated in the writ petition that in the entire course, the petitioner was not at fault. However, the petitioner was placed under suspension on 07.07.1990 which was later revoked on 27.07.1990. An enquiry was initiated against the petitioner and charge sheet was served, alleging the negligence on his part for not keeping the keys safely and not depositing the amount in time with the Treasury. Inquiry Officer though found that there was no intentional act on the part of the petitioner but the Punishing Authority inflicted punishment of censure, against the petitioner and also directed that amount of Rs. 1,99,962.80 paise be recovered in installments by deducting one-third of the salary of the petitioner every month. Said order dated 30.06.1994, has been challenged in this writ petition. It is further stated in the writ petition that the petitioner made a representation to the department that recovery of the amount be stayed till the criminal case against the accused is decided by the Court. Simultaneously, the petitioner preferred Departmental

Appeal against the aforesaid order dated 30.06.1994. Meanwhile, it appears that the main accused in the theft

case was convicted by the Court of Judicial Magistrate, Haldwani, on 26.02.1995 and a recovery proceedings, departmentally stated against the petitioner without keeping in view of the fact that a good amount of the stolen money has already been realized by the police from the culprits. It is further alleged that the inquiry report was not furnished to the petitioner before the punishment was awarded to him in the departmental inquiry.

3. A counter affidavit was filed on behalf of the respondents, before the Allahabad High Court, where originally this writ petition was filed (it is received by this Court by transfer under Section 35 of the U.P. Reorganization Act, 2000). In the counter affidavit, it has been admitted that the petitioner was posted as Range Officer in Gaula Range of Forest Division, Haldwani, in the year 1990. It is also admitted that theft of Rs. 1,99,962.80 paise, took place from the Cash Chest of the department. It is also admitted that departmental inquiry was initiated against the petitioner. However, the innocence alleged by the petitioner in the writ petition is emphatically denied and it is stated that petitioner is responsible not only for the negligence of not only keeping the keys safely but also not depositing huge amount of Rs. 1,99,962.80 paise with the Treasury in time. It is further stated in the counter affidavit that out of said amount, only Rs. 45,236.25 paise could be recovered by the police during investigation. It is alleged that, had the First Information Report been earlier by the petitioner, more amount could have been recovered. It is true that the petitioner himself was not involved in the theft but he was

responsible for the negligence and financial loss caused to the ex-chequer. In the rejoinder affidavit, the petitioner has reiterated the facts alleged in the writ petition.

4. I heard learned Counsel for the parties and perused the record.

5. Admittedly, petitioner was posted as Range Officer in Gaula Range of the Forest Division, Haldwani, in the year 1990. It is also admitted that the theft took place from the Cash Chest of the office of the petitioner in which Rs. 1,99,962.80 paise was stolen. It is also not denied that First Information Repost of the incident, was lodged and some culprits were apprehended and they were tried by the court concerned. It is also not disputed that a sum of Rs. 45,236.25 paise, was recovered during investigation by the police from the accused persons. It has also not been denied that one of the accused has already been convicted by the Judicial Magistrate, Haldwani, in connection with the aforesaid crime. The entire dispute, which arises through this writ petition relates to the punishment awarded in departmental enquiry, by the respondents to the petitioner. A copy of the impugned order dated 30.06.1994, is annexed as Annexure-4 to the writ petition. From said order, it is clear that there were three charges, against the petitioner, namely, that-

(i) he failed to keep the keys of the Cash Chest safely,

(ii) he failed to deposit the Government money without delay with the bank, as required under Financial Handbook Volume V Part I, Rule 19, 20 and 21, and

(iii) he failed to lodge the First Information Report immediately after the incident.

The punishing authority i.e. Chief Conservator of Forest (Administration and Planning), U.P. Lucknow, while

awarding the impugned punishment, considered the inquiry report and found that there was no intentional act on the

part of the delinquent official, except the negligence on his part, as mentioned in the above charges. Accordingly two fold directions were issued in the punishment order:-

(a) a recovery of Rs. 1,99,962.80 paise be made from the petitioner in installments by deducting one-third of his salary and

(b) delinquent official be censured.

6. Learned Counsel for the petitioner, argued that he was not given copy of the inquiry report, before the punishment was awarded against him. In this connection, he drew attention of this Court to the principal of law laid down in Managing Director, ECIL Vs. B. Karunakar AIR 1994 Supreme Court 1074, and argued that since the copy of the inquiry report was not served on him, the inquiry gets vitiated and the punishment awarded is liable to be quashed. I have examined the record and also gone through the principle of law reported in aforesaid case. The Apex Court while interpreting Article 311 of the Constitution of India, has held that before the punishment is awarded, inquiry report s required to be furnished to the delinquent official, whether he asks for it or not. It is true that the aforesaid requirement is a settled principal of law in awarding the major punishment. It is pertinent to mention here that Article 311 of the Constitution of India, deals only with the punishment of dismissal, removal and reduction in rank. The impugned punishment, awarded to the petitioner is not one of the three mentioned in Article 311 of the Constitution. Rule 9(4) of U.P. Government Servant (Disciplinary Inquiry and Appeal) Rules, 1999, categorized the censure entry as a minor punishment. As

such non-furnishing of the Inquiry report for awarding such punishment is not fatal nor vitiates the inquiry.

7. Facts and circumstances of the case, as discussed above show that theft did take place of Rs. 1,99,962.80 paise from the Cash Chest, keys of which were with the petitioner and he was certainly negligent in not keeping the same safely. It is also true that had the petitioner deposited such a huge sum with District Treasury in time, the loss to the public ex-chequer could have been avoided. Therefore, minor punishment of censure to the petitioner and recovery of the loss in the instalments, cannot be said either to be unreasonable or disproportionate to the charge. However, since admittedly an amount of Rs. 45,236.25 Paise has already been recovered out of Rs. 1,99,962.80 paise as such the recovery in respect of said recovered amount of Rs. 45,236.25 paise, cannot be said to be the loss to the government. Therefore, in view of the above discussion, this Court is of the opinion that the recovery of Rs. 45,236.25 paise in the punishment order is untenable in law. Accordingly, the punishment order is liable to be partly quashed to that extent only. Therefore, the writ petition is allowed partly and disposed of with the direction that instead of Rs. 1,99,962.80 paise, only Rs. 1,54,726.55 paise, would be recovered from the petitioner, in terms of the directions, mentioned in the impugned order dated 30.06.1994. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 15th July, 2005
Sweta